

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sutter)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
MICHAEL RAYMOND MORENO,  
  
Defendant and Appellant.

C063736  
  
(Super. Ct. No. CRF09-  
0832)

Defendant Michael Raymond Moreno participated in a gang-related fight in which a home surveillance video captured images of him kicking and stepping on the victim and stabbing the victim two times in the side of his chest. Once in custody, defendant admitted to police that he was a gang member and that he stabbed the victim twice because the victim "disrespected him."

Defendant, represented by counsel, entered a plea of no contest to attempted murder without premeditation and deliberation (Pen. Code, §§ 664, 187; further undesignated statutory references are to this code). He admitted that he personally inflicted great bodily injury in the commission of that crime (§ 12022.7, subd. (a)), that the crime was committed

for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), and that he was at least 16 years of age when he committed the crime (Welf. & Inst. Code, § 707, subd. (b)). Defendant also agreed to a stipulated prison sentence of 20 years.

The court denied probation and sentenced defendant to the middle term of seven years for the principal offense, plus a consecutive three-year term for the great bodily injury enhancement and a consecutive 10-year term for the gang enhancement, for an aggregate term of 20 years in state prison. The court awarded presentence custody credits, imposed specified fees and fines, and reserved jurisdiction on the issue of victim restitution. The remaining charges against defendant were dismissed in the interest of justice. The court entered a subsequent order that defendant pay \$19,611.89 in victim restitution. Defendant filed a timely notice of appeal.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a one-page supplemental letter brief asserting three claims, all of which are without merit.

First, defendant claims he was "forced" into entering his plea agreement. To the extent defendant is challenging the

validity of the plea, he failed to secure a certificate of probable cause and his claim is therefore barred. (§ 1237.5, subd. (b); *People v. Shelton* (2006) 37 Cal.4th 759, 766; *People v. Buttram* (2003) 30 Cal.4th 773, 790.)

Second, defendant claims he was "treated poorly" throughout the case and that his trial counsel did not provide him with information regarding plea negotiations. The record does not indicate what discussions took place between counsel and defendant regarding plea negotiations or any other part of the proceedings, nor does it indicate what issues may have been taken into consideration in reaching the decision to plead no contest; those are facts outside the record. (See *People v. Lucero* (2000) 23 Cal.4th 692, 728-729.) Matters affecting the adequacy of counsel's representation which are outside the record cannot be reviewed on appeal and, as such, "[w]here the record does not illuminate the basis for the challenged acts or omissions, a claim of ineffective assistance is more appropriately made in a petition for habeas corpus." (*People v. Pope* (1979) 23 Cal.3d 412, 426, overruled on other grounds in *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn. 10, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1; *People v. Mosqueda* (1970) 5 Cal.App.3d 540, 546.) Accordingly, defendant's claim fails.

Third, defendant claims there is insufficient evidence to support the gang enhancement. Having admitted the gang enhancement pursuant to entry of his plea, defendant cannot now attack the validity of his admission in the absence of a

certificate of probable cause. (*People v. Fulton* (2009)  
179 Cal.App.4th 1230, 1237.)

Finally, pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we have deemed defendant to have raised an issue (without additional briefing) of whether amendments to section 4019, effective January 25, 2010, apply retroactively to his pending appeal and entitle him to additional presentence conduct credits. In our recent opinion of *People v. Brown* (2010) 182 Cal.App.4th 1354, \_\_\_\_ [p. 24], we concluded that the amendments do apply to all appeals pending as of January 25, 2010. However, as defendant was convicted of attempted murder, a serious felony as provided for in section 1192.7, subdivision (c)(9), the recent amendments to section 4019 do not operate to modify his entitlement to credit. (§§ 2933.1, subd. (a), 4019, subds. (b)(2) and (c)(2); Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50.)

Having undertaken an examination of the entire record, we find no arguable error in favor of defendant.

DISPOSITION

The judgment is affirmed.

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NICHOLSON, J.

We concur:

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BLEASE, Acting P. J.

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ROBIE, J.